

APPEAL NO. 032951
FILED DECEMBER 18, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 14, 2003. The hearing officer determined that the appellant (claimant) had disability, resulting from the compensable injury sustained on _____, for the period beginning on February 21 and continuing through February 27, 2000, and for the period beginning on March 16, 2000, and continuing through the date of the hearing. The claimant appealed, asserting that her period of disability for the _____, compensable injury began on September 26, 2002, and is ongoing. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable lumbar spine injury on December 12, 1998, which required surgical intervention. It is also undisputed that while working for the same employer, the claimant sustained a second compensable injury to her cervical spine on _____, which also required surgical intervention. The claimant testified that she continued to work after sustaining the two injuries, missing some time here and there, until she was taken completely off work on March 16, 2000. The claimant further testified that she eventually returned to work on or about August 22, 2003, working fewer hours and earning lower wages than she did prior to March 16, 2000. The claimant's argument at the hearing, and again on appeal, is that there are two separate and distinct periods of disability for the two injuries. The claimant asserts that her disability prior to September 26, 2002, was solely attributable to her December 12, 1998, lumbar spine injury, and that her disability beginning on September 26, 2002, to the present is due to her _____, cervical spine injury. After reviewing the medical records and considering the claimant's testimony, the hearing officer concluded that the claimant's inability to obtain and retain employment at her preinjury wage after March 16, 2000, was attributable to both her lumbar and cervical spine injuries.

The issue of disability is a factual question for the fact finder to resolve. Conflicting evidence was presented as to the date the claimant's disability began. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna

Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The evidence supports the hearing officer's factual determinations. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION for Fremont Industrial Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge